

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CHRISTOPHER O. SMITH,

Case No.: 2:20-cv-01108-JAD-DJA

Petitioner

V.

JERRY HOWELL, et al.,

## Respondents

## Order Directing Service and Appointing Counsel

[ECF No. 1-2]

Petitioner Christopher O. Smith brings this pro se 28 U.S.C. § 2254 petition for writ of corpus to challenge his murder and burglary convictions and has now paid the filing fee. He asks for court-appointed counsel.<sup>2</sup> Having reviewed the petition under Habeas Rule 4, the Clerk of Court to docket it<sup>3</sup> and serve it on respondents. I also grant the motion to appoint counsel.

The decision to appoint counsel is generally discretionary,<sup>4</sup> but counsel must be appointed if the case is so complex that denial of counsel would amount to a denial of due process or the petitioner has such limited education that he is incapable of fairly presenting his

<sup>1</sup> See ECF Nos. 1-1, 4.

2 ECF No. 1-2.

21       <sup>3</sup> Because a petition for federal habeas corpus should include all claims for relief of which  
22 petitioner is aware, failure to include such a claim in a petition may result in it being forever  
barred. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not  
included in his petition, he should notify the court of that as soon as possible, preferably by  
means of a motion to amend his petition to add the claim.

<sup>23</sup> <sup>4</sup> *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), cert. denied, 469 U.S. 838 (1984).

1 claims.<sup>5</sup> Smith is serving a lengthy sentence, and it appears that some of the legal issues he  
2 wishes to raise related to his jury trial may be complex. To ensure due process, I grant Smith's  
3 request to appoint counsel.

4 IT IS THEREFORE ORDERED that petitioner's motion for appointment of counsel  
5 [ECF No. 1-2] is GRANTED;

6 IT IS FURTHER ORDERED that **the Federal Public Defender for the District of**  
7 **Nevada (FPD) is appointed to represent petitioner.** After counsel has appeared for petitioner  
8 in this case, the court will issue a scheduling order, which will, among other things, set a  
9 deadline for the filing of an amended petition;

10 IT IS FURTHER ORDERED that **the Clerk of Court is directed to:**

- 11 • FILE and ELECTRONICALLY serve the petition (ECF No. 1-1) on the  
12 respondents;
- 13 • ADD Aaron D. Ford, Nevada Attorney General, as counsel for respondents;
- 14 • DETACH AND FILE petitioner's motion for appointment of counsel (ECF No. 1-  
15 2);
- 16 • Electronically serve the FPD a copy of this order, together with a copy of the  
17 petition for writ of habeas corpus (ECF No. 1-1). The FPD has 30 days from the  
18 date of entry of this order to file a notice of appearance or to indicate to the court  
19 its inability to represent petitioner in these proceedings.

20 Dated: August 4, 2020

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22 U.S. District Judge Jennifer A. Dorsey

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<sup>5</sup> See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.3d 948 (8th Cir. 1970).